

The Western District of Oklahoma is seeking comments on the following proposed changes to the Court's Local Criminal Rules. Comments should be sent to the Court's comments e-mail box (comments@okwd.uscourts.gov) no later than **May 18, 2018**.

a. Proposed Amendment to LCrR 5.1

LCrR 5.1(a)(3) has been modified to clarify the use and disclosure of pretrial services reports. The modified rule reads as follows (new language is highlighted; deleted language is stricken):

LCrR5.1 Timing of Initial Appearances

(a) Unless otherwise specifically set, initial appearances will be conducted by the duty magistrate judge at 3:00 p.m. each business day. The following procedures are implemented to facilitate this docket:

* * *

(3) A written pretrial services report shall be presented to the duty magistrate judge and made available to defense counsel and the government ~~by 2:30 p.m.~~ **as soon as practicable** on the day of the defendant's first court appearance. ~~Pretrial services reports are confidential, subject to the limitations and exceptions of 18 U.S.C. § 3153(c), and must be returned to the pretrial services officer at the close of any hearing. Defense counsel and the attorney for the government may, however, retain the criminal history attachment of the pretrial services report.~~ **The use and disclosure of the pretrial services report, and any information obtained by the pretrial services officer while performing the pretrial services function, are governed by 18 U.S.C. § 3153(c). A copy of the pretrial services report and all supplemental reports prepared by the Probation Office may be**

retained by defense counsel and the attorney for the government, but shall not be copied or distributed to agents, defendants, or third parties.

b. Proposed Additional Rule 5.1.1

The Court proposes adding the following rule to clarify how to request to listen to Magistrate Judge proceedings. Currently this information is contained in the General Order governing court reporters and so is not readily accessible to practitioners.

LCrR5.1.1 Playback and Transcript Requests.

Any party may request permission to listen to a playback of any preliminary proceeding before the Magistrate Judge by filing a motion to do so with the Magistrate Judge who conducted the proceeding. The applicant may also request a transcript of the proceeding by contacting the clerk of court and making satisfactory arrangements for the payment of the transcript by one of the court's certified court reporters.

c. Proposed Amendments to LCrR12.1

The Court has added a section on reply and supplemental briefs, specifying that leave must be sought before filing such briefs and the page length for such briefs.

LCrR12.1 Pretrial Motions.

(a) **Time for Filing Pretrial Motions.** Unless otherwise ordered by the court or addressed elsewhere by these rules, all pretrial motions, including requests for rulings on any contested matter of discovery, shall be filed and served within 21 days from the date a plea of not guilty is entered.

(b) **Response Time.** The party opposing the motion shall file and serve a response within 9 days after the motion is filed.

(c) **Reply and Supplemental Briefs.** Reply briefs are permitted only with leave of court and shall not reargue the points and authorities included in the opening brief. Reply briefs shall be limited to 10 pages in length unless otherwise authorized by the court and shall comply with the format requirements of LCvR7.1(e).

(d) **Motions in Writing.** Motions in criminal cases shall be in writing and state with particularity the grounds therefor and the relief or order sought. All motions and other pleadings shall conform to the requirements of LCrR49.2.

(e) **Concise Brief Required.** All motions and responses thereto must be accompanied by a concise brief citing all authorities upon which the movant or respondent relies. Briefs shall conform to LCvR7.1(c)-(e). A motion and the brief in support may be presented to the court as one document if clearly stated in the caption of the pleading.

(f) **Extensions of Time and Continuances.** All motions for extension of time or continuance shall state:

(1) the event and date that activated the time limits of the Speedy Trial Act (e.g., “defendant arrested April 1, 2010, indictment or information due within 30 days”; “defendant appeared before United States Magistrate Judge May 1, 2010, jury trial to commence within 70 days”);

(2) the date the act is due to occur without the requested extension or continuance;

(3) whether previous motions for extensions or continuances have been made, the disposition of the motions, and, for any motion that was granted,

whether the court found the period of delay resulting from that extension or continuance to be excludable under the Speedy Trial Act;

(4) whether the delay resulting from the requested extension or continuance is excludable under the Speedy Trial Act;

(5) specific reasons for the requested extension or continuance, including why the act cannot be done within the originally allotted time;

(A) If the reason given for the extension is that other litigation presents a scheduling conflict, the motion must also:

(i) identify the litigation by caption, case number, and court;

(ii) describe the action taken in the other litigation, if any, to request a continuance or deferment;

(iii) state the reasons why the other litigation should receive priority;

(iv) state reasons why other associated counsel cannot handle the case in which the extension is being sought or the other litigation; and

(v) recite any other relevant circumstances.

(B) If an extension is requested due to the complexity of the case, including voluminous discovery, the motion must include specific facts demonstrating such complexity.

(C) If the motion is sought due to some type of personal hardship that counsel or the client will suffer if an extension is not granted, the motion must state the specific nature of that hardship and when the hardship might be resolved.

(D) If the motion would require divulging trial strategy or information of a highly personal nature, including medical data, the movant may seek leave to

file the motion under seal. If trial strategy would be revealed, the motion and request for leave may be presented *ex parte*.

(6) whether opposing counsel objects to the requested extension or continuance;

(7) the impact, if any, on the scheduled trial or other deadlines; and

(8) the precise relief requested by the motion.

All such motions shall be accompanied by a proposed order for the court's consideration. The proposed order, which shall not differ in any respect from the relief requested in the motion, shall state specifically the deadline(s) being extended and the new date(s) for the deadline(s) and shall include the findings required under the Speedy Trial Act.

d. Proposed Amendment to LCrR12.2

The proposed amendment deletes the requirement for furnishing an envelope when filing documents under seal. The envelope is no longer necessary now that sealed documents are filed electronically through CM/ECF.

LCrR12.2 Motions to Seal.

Any party requesting that any pleading, document, or other matter be filed under seal (such as *ex parte* or in camera motions, including in camera motions for downward departure of a sentence, if desired) shall file an application and proposed order with the assigned judge. ~~A clearly identified envelope for sealing the matter shall be furnished at the time of filing the request.~~ Responses to sealed matters may likewise be filed under seal. A separate request to seal such a response is not necessary.

e. Proposed Amendment to LCrR30.1

The proposed amendment deletes the reference to WordPerfect and specifies that proposed jury instructions should be submitted in a format compatible with Microsoft Word.

LCrR30.1 Jury Instructions.

All requested jury instructions must be supported by appropriate authority and shall be filed and served at least 7 days prior to the commencement of the scheduled trial docket. Any objections to requested jury instructions shall be filed at least 4 days prior to the commencement of the scheduled trial docket. In addition to filing any written requested jury instructions, the parties shall submit their proposed jury instructions in WordPerfect ~~a~~ format compatible with Microsoft Word to the clerk via the mailbox designated in the ECF Policy Manual for the assigned judge.

f. Proposed Amendment to LCrR32.1

LCrR32.1 has been modified to include post-violation reports and to clarify the limited persons to whom pre-sentence and post-violation reports can be disseminated. The proposed amendment also deletes the reference to the clerk filing documents under seal since attorneys now do this electronically.

LCrR32.1 Confidentiality of Pre-Sentence and Post-Violation Reports.

(a) Pre-sentence and post-violation reports contain confidential information and recommendations. For security purposes, ~~pre-sentence reports may not remain in the possession of an incarcerated defendant~~ may not retain a copy of any version of a pre-sentence or post-violation report, nor may such reports ~~or~~ be disseminated beyond the members of the prosecution or defense team unless otherwise ordered by the court.

(b) Any pre-sentence or post-violation report filed with the court is a restricted document, that is, access to the document is restricted to counsel for the government, counsel for the specific defendant, the United States Probation Office, and court staff. In the event any party wishes to make substantial reference to the contents of confidential information in the pre-sentence or post-violation report in any motion, brief, memoranda of law or other document, the party shall apply to the court for an order authorizing the clerk to file the motion, brief, memorandum or other document to be filed under seal.

g. Proposed Amendment to LCrR44.1

This amendment changes the reference to the most recent General Order governing implementation of the Criminal Justice Act.

LCrR44.1 Plan Pursuant to the Criminal Justice Act for the Representation of Indigent Defendants.

The Federal Public Defender Organization, supervised by the Federal Public Defender, shall assist in the administration of the Court's Criminal Justice Act Plan and maintain a panel(s) of eligible attorneys. (See General Order 09-03 16.2, General Order Regarding the Plan of the United States District Court for the Western District of Oklahoma for the Implementation of the Criminal Justice Act, 18 U.S.C. § 3006A[.])

h. Proposed Amendment to LCrR57.2

This amendment simplifies the rule by not repeating certain Local Civil Rules that are incorporated by reference.

LCrR57.2 Attorneys – Applicability of Civil Rules.

~~(a) **Applicability of Civil Rules.** The provisions of LCvR83.2, (a) Roll of Attorneys, (b) Committee on Admissions and Grievances, (c) Procedure for Admission, (d) Eligibility, and (e) Reciprocity; LCvR83.5, Attorney Withdrawal from Case; and LCv83.6 Discipline by the Court, are applicable to these local criminal rules and are not repeated. Certain other provisions are repeated for emphasis.~~

~~—— (b) **Attorneys for the United States.** Attorneys who are employed or retained by the United States or its agencies may practice in this court in all cases or proceedings in which they represent the United States or such agencies.~~

~~—— (c) **Admission Pro Hac Vice.** Any attorney who is eligible for admission to the Bar of this Court may, in the discretion of a judge of this court, be granted temporary admission to practice in a pending case. Attorneys requesting such admission are required to attach to their motion a completed Request for Admission Pro Hac Vice form provided by the court clerk's office along with a required fee. Counsel admitted pro hac vice shall submit an ECF Registration Form and upon activation, electronically file an entry of appearance consistent with LCvR83.4.~~